

A bill for an act

relating to elections; preventing candidates in an election from determining validity of an absentee ballot envelope; clarifying write-in votes may not serve as identifying marks on ballots; shortening duration of the general election canvass; eliminating automatic recounts and allowing certain candidates to request a state-funded recount; amending Minnesota Statutes 2008, sections 204B.44; 204C.18, subdivision 2; 204C.33, subdivisions 1, 3; 204C.35, subdivisions 1, 2.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2008, section 204B.44, is amended to read:

**204B.44 ERRORS AND OMISSIONS; REMEDY.**

(a) Any individual may file a petition in the manner provided in this section for the correction of any of the following errors, omissions, or wrongful acts which have occurred or are about to occur:

~~(a)~~ (1) an error or omission in the placement or printing of the name or description of any candidate or any question on any official ballot;

~~(b)~~ (2) any other error in preparing or printing any official ballot;

~~(c)~~ (3) failure of the chair or secretary of the proper committee of a major political party to execute or file a certificate of nomination; or

~~(d)~~ (4) any wrongful act, omission, or error of any election judge, municipal clerk, county auditor, canvassing board or any of its members, the secretary of state, or any other individual charged with any duty concerning an election.

(b) The petition shall describe the error, omission, or wrongful act and the correction sought by the petitioner. The petition shall be filed with any judge of the Supreme Court in the case of an election for state or federal office or any judge of the district court in that county in the case of an election for county, municipal, or school district office. The

petitioner shall serve a copy of the petition on the officer, board or individual charged with the error, omission, or wrongful act, and on any other party as required by the court. Upon receipt of the petition the court shall immediately set a time for a hearing on the matter and order the officer, board or individual charged with the error, omission or wrongful act to correct the error or wrongful act or perform the duty or show cause for not doing so. The court shall issue its findings and a final order for appropriate relief as soon as possible after the hearing. Failure to obey the order is contempt of court.

(c) An order issued under this section may not authorize the candidates in an election to determine whether an absentee ballot envelope was improperly rejected.

Sec. 2. Minnesota Statutes 2008, section 204C.18, subdivision 2, is amended to read:

Subd. 2. **Ballots; identifying marks; penalty.** No voter, election judge, or other individual shall place at any time a mark as a means of identification upon any ballot handed to or cast by a voter or upon spoiled or discarded ballots, except the initials authorized by section 204C.09. An individual name written on the space provided on a ballot for a write-in vote is not a means of identification prohibited by this subdivision. A violation of this subdivision is a gross misdemeanor.

Sec. 3. Minnesota Statutes 2008, section 204C.33, subdivision 1, is amended to read:

Subdivision 1. **County canvass.** The county canvassing board shall meet at the county auditor's office on or before the ~~seventh~~ third day following the state general election. After taking the oath of office, the board shall promptly and publicly canvass the general election returns delivered to the county auditor. Upon completion of the canvass, the board shall promptly prepare and file with the county auditor a report which states:

- (a) the number of individuals voting at the election in the county and in each precinct;
- (b) the number of individuals registering to vote on election day and the number of individuals registered before election day in each precinct;
- (c) the names of the candidates for each office and the number of votes received by each candidate in the county and in each precinct, including write-in candidates for state and federal office who have requested under section 204B.09 that votes for those candidates be tallied;
- (d) the number of votes counted for and against a proposed change of county lines or county seat; and
- (e) the number of votes counted for and against a constitutional amendment or other question in the county and in each precinct.

The result of write-in votes cast on the general election ballots must be compiled by the county auditor before the county canvass, except that write-in votes for a candidate for state or federal office must not be counted unless the candidate has timely filed a request under section 204B.09, subdivision 3. The county auditor shall arrange for each municipality to provide an adequate number of election judges to perform this duty or the county auditor may appoint additional election judges for this purpose. The county auditor may open the envelopes or containers in which the voted ballots have been sealed in order to count and record the write-in votes and must reseal the voted ballots at the conclusion of this process.

Upon completion of the canvass, the county canvassing board shall declare the candidate duly elected who received the highest number of votes for each county and state office voted for only within the county. The county auditor shall transmit one of the certified copies of the county canvassing board report for state and federal offices to the secretary of state by express mail or similar service immediately upon conclusion of the county canvass.

Sec. 4. Minnesota Statutes 2008, section 204C.33, subdivision 3, is amended to read:

Subd. 3. **State canvass.** The State Canvassing Board shall meet at the secretary of state's office on the ~~second Tuesday~~ fourth day following the state general election to canvass the certified copies of the county canvassing board reports received from the county auditors and shall prepare a report that states:

- (a) the number of individuals voting in the state and in each county;
- (b) the number of votes received by each of the candidates, specifying the counties in which they were cast; and
- (c) the number of votes counted for and against each constitutional amendment, specifying the counties in which they were cast.

All members of the State Canvassing Board shall sign the report and certify its correctness. The State Canvassing Board shall declare the result within three days after completing the canvass.

Sec. 5. Minnesota Statutes 2008, section 204C.35, subdivision 1, is amended to read:

Subdivision 1. **Automatic State-funded recounts.** (a) In a state primary when the difference between the votes cast for the candidates for nomination to a statewide federal office, state constitutional office, statewide judicial office, congressional office, state legislative office, or district judicial office:

(1) is less than one-half of one percent of the total number of votes counted for that nomination; or

(2) is ten votes or less and the total number of votes cast for the nomination is 400 votes or less; and the difference determines the nomination, the canvassing board with responsibility for declaring the results for that office shall manually recount the vote, if requested to do so by the candidate with the second highest number of votes.

(b) In a state general election when the difference between the votes of a candidate who would otherwise be declared elected to a statewide federal office, state constitutional office, statewide judicial office, congressional office, state legislative office, or district judicial office and the votes of any other candidate for that office:

(1) is less than one-half of one percent of the total number of votes counted for that office; or

(2) is ten votes or less if the total number of votes cast for the office is 400 votes or less, the canvassing board shall manually recount the votes, if requested to do so by the candidate with the second highest number of votes.

(c) A recount must not delay any other part of the canvass. The results of the recount must be certified by the canvassing board as soon as possible.

(d) Time for notice of a contest for an office which is recounted pursuant to this section shall begin to run upon certification of the results of the recount by the canvassing board.

(e) A losing candidate may waive a recount required pursuant to this section by filing a written notice of waiver with the canvassing board.

Sec. 6. Minnesota Statutes 2008, section 204C.35, subdivision 2, is amended to read:

Subd. 2. **Discretionary candidate recount.** (a) A losing candidate whose name was on the ballot for nomination or election to a statewide federal office, state constitutional office, statewide judicial office, congressional office, state legislative office, or district judicial office may request a recount in a manner provided in this section at the candidate's own expense when the vote difference is greater than the difference required by ~~this section~~ subdivision 1. The votes shall be manually recounted as provided in this section if the candidate files a request during the time for filing notice of contest of the primary or election for which a recount is sought.

(b) The requesting candidate shall file with the filing officer a bond, cash, or surety in an amount set by the filing officer for the payment of the recount expenses. The requesting candidate is responsible for the following expenses: the compensation of the secretary of state, or designees, and any election judge, municipal clerk, county auditor,

5.1 administrator, or other personnel who participate in the recount; the costs of computer  
5.2 operation, preparation of ballot counting equipment, necessary supplies and travel  
5.3 related to the recount; the compensation of the appropriate canvassing board and costs of  
5.4 preparing for the canvass of recount results; and any attorney fees incurred in connection  
5.5 with the recount by the governing body responsible for the recount.

5.6 (c) The requesting candidate may provide the filing officer with a list of up to three  
5.7 precincts that are to be recounted first and may waive the balance of the recount after these  
5.8 precincts have been counted. If the candidate provides a list, the recount official must  
5.9 determine the expenses for those precincts in the manner provided by paragraph (b).

5.10 (d) If the winner of the race is changed by the optional recount, the cost of the  
5.11 recount must be paid by the jurisdiction conducting the recount.

5.12 (e) If a result of the vote counting in the manual recount is different from the result  
5.13 of the vote counting reported on election day by a margin greater than the standard for  
5.14 acceptable performance of voting systems provided in section 206.89, subdivision 4, the  
5.15 cost of the recount must be paid by the jurisdiction conducting the recount.